IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

AS. No. 366 of 1997(E)

OS.455/1992 of PRINCIPAL SUB COURT, KOLLAM
.....

APPELLANTS/DEFENDANTS:
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1. **STATE OF KERALA - REP. BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM.**

2. **DISTRICT COLLECTOR, KOLLAM.**

3. **TAHSILDAR, KUNNATHOOR TALUK.**

BY GOVERNMENT PLEADER SRI. K.V. MANOJ KUMAR.

RESPONDENT/PLAINTIFF:

NARAYANAN UNNI, KIZHAKKEDATHU MADAM, KANDIYOORMURI, MAVELIKKARA.

BY ADV. SRI. TKM. UNNITHAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS. No. 366/1997(E)

Order on C.M.P. No. 287/1998 in A.S. No. 366/1997

Dismissed.

	Sd/-	Sd/-
05.09.2007	**KURIAN JOSEPH** **JUDGE**	**HARUN-UL-RASHID** **JUDGE**

// True Copy //

P.A. to Judge.

smp

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

A.S. NO. 366 OF 1997

J U D G M E N T

05.09.2007

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

A.S. NO. 366 OF 1997

Dated this the 5th day of September, 2007.

J U D G M E N T

Kurian Joseph, J.

An extent of 6.23 acres of land was sought to be proceeded against in distress sale under the provisions of the Kerala Revenue Recovery Act. The bonafide purchaser, however, was physically delivered only 4.73 acres of land. There was only symbolic delivery for the rest-1.50 acres.

Whether the auction purchaser is entitled to compensation in respect of the property admittedly not delivered? This is the simple question arising for consideration in this appeal filed at the instance of the defendants-State.

2. Plaintiff is the respondent. One Prasanna Chandran Pillai, Thennala Bunglow, Karunagappally was a defaulter of abkari arrears, sales tax dues etc. 6.23 acres of land belonging to him was proceeded against under the provisions of the Kerala Revenue Recovery Act. The auction was held on 29.08.1978 after complying with the required procedural formalities. The sale was confirmed on 29.09.1978.

3. It is admitted in the written statement as well as the appeal memorandum that ".....only 4.73 acres of land was delivered over to the plaintiff". It is also the admitted case of the appellants that 1.50 acres of land in Sy. No. 111/6 of Sooranadu village, 35 cents of land in Sy. No. 448/4 and 15 cents in Sy. No. 448/5 of the same village were not physically delivered.

4. It has come out in evidence that one acre of land in Sy. No. 111/6 had already been transferred by the said Prasanna Chandran Pillai on 26.05.1977 and transferees had instituted O.S. No. 29/1979 before the Sub Court, Pathanamthitta for a declaration that the sale in respect of the said extent held on 29.08.1978 is void. The suit was decreed. The matter was pursued in appeal and second appeal unsuccessfully leading to Exhibit A1 judgment in S.A. 668/85. It was declared that the sale in favour of Sri. Janardhana Kurup was valid since the condition under Section 44(2) of the Kerala Revenue Recovery Act had not been satisfied. As far as the remaining 50 cents of the disputed one acre and 50 cents of land also, DW1 has admitted in evidence that the same was not delivered in view of other pending disputes. Thus it is the admitted case that an

extent of 4.73 acres of land alone was physically delivered to the respondent-plaintiff, out of the 6.23 acres sold in auction.

5. It was in such circumstances, O.S. No. 455/1992 was filed for compensation claiming an amount of Rs. 1,50,000/-, as the market value of the land prevailing during 1980-81. It was contended before the trial court that the entire extent of 6.23 acres of land had been symbolically delivered to the plaintiff and mutation had also been effected. Further contention was that the suit was not maintainable.

6. The trial court repelled both contentions and held that, for the only reason that there was symbolic delivery, an auction purchaser cannot be deprived of his right to own and enjoy the entire physical extent of the property offered for sale and purchased by him. Regarding the maintainability, it was held that since the sale itself was void ab initio in respect of part of the property, the suit was maintainable, as held by this Court in S.A. 668/1985, relating to the very same sale held on 29.08.1978.

7. Learned Government Pleader strenuously contended that the property having been symbolically delivered and the mutation

having been effected, the plaintiff is not entitled to claim any compensation in respect of the property not physically delivered. It is also contended that the suit is not maintainable in view of the bar under Section 72 of the Kerala Revenue Recovery Act.

8. As already noted by us, it is the admitted case of the State that out of 6.23 acres of property offered for auction sale, only 4.73 acres alone was physically delivered. As far as one acre of property is concerned, this Court has already declared that the transfer made by the defaulter is valid and that has become final in view of the judgment in S.A. No. 668/1985. That property was also included in the sale proclamation.

9. As far as 35 cents of property is concerned, DWI has admitted that the same is covered by a purchase certificate issued under Section 72 of the Land Reforms Act. However, that was also included in the sale proclamation. DW1 has further admitted that 15 cents of property also was not delivered in view of various other disputes. Thus, on the evidence of the State itself and going by the admitted case of the appellants-State, the sale proclamation and sale in respect of atleast 1.35 acres of property was illegal, since the property was not physically available for distress sale.

In such circumstances, there is no bar in instituting the civil suit for compensation and the bar under Section 72 of the Kerala Revenue Recovery Act will not apply. That question was squarely answered by this Court in S.A. No. 668/1985. The plaintiff only claimed compensation to the tune of Rs. 1 lakh for the loss sustained on account of non-delivery of one acre of land comprised in Sy. No. 111/6 of Sooranadu village and Rs. 50,000/- as compensation for non-delivery of 50 cents of land in Sy. No. 448/4. There is no dispute on the quantum. The property having admittedly not been physically delivered to the auction purchaser/plaintiff/respondent, the court below is justified in granting the relief. We thus see no merit in this appeal and it is accordingly dismissed.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE

smp